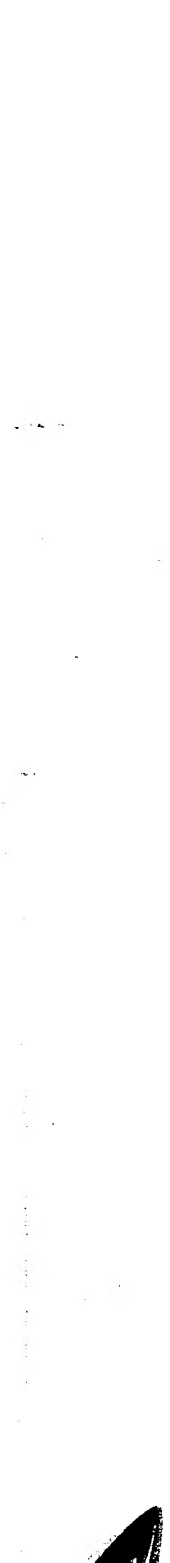
FISHER

THE SCHOOL QUESTION



Fisher, James

THE School Question.

SPEECH

—OF—

MR. JAMES FISHER, M. P. P.,

—IN THE—

Manitoba Legislature, 2nd March, 1893.

THE SCHOOL QUESTION.

Speech of Mr. James Fisher, in the Legislature of Manitoba, on March 2nd, 1893, on moving his Resolution in favor of adopting the Ontario School System.

Mr. Fisher spoke as follows :—

Mr. Speaker:

In rising to move the resolution on the school question which appears on the order paper, I think it will be convenient that I should read to the house the resolution itself. I desire to move, sir:—

"That in the opinion of this House one of the chief difficulties in government that harassed the statesmen of the old Canadian Provinces, under the Union of 1840, and for which a remedy was sought in the present larger union, arose from the impracticability of adopting laws regarding education for the respective Provinces, that were acceptable alike to the Protestant and Roman Catholic populations therein.

2. "This unhappy difficulty was due to the irreconcilable differences between the opinions of the Protestant population and the dogmatic teachings of the Roman Catholic church, on the subject of denominational instruction in public schools.

3. "The only solution, and that by no means universally satisfactory, which the framers of Confederation arrived at in dealing with this question, was that found in the educational clauses of the British North America Act, which practically prohibited Provincial Legislatures from passing laws prejudicially affecting rights with respect to denominational schools which the law of the Province recognized at the Union, and giving to the Catholic or Protestant minority in any Province wherein such schools should be established after the Union, a right of appeal to the Federal powers against any law affecting the rights thus established, with power to the Dominion Parliament to pass remedial legislation under that appeal.

4. "The House recognizes that this provision, the application of which was not limited in its terms to any part or parts of the Dominion, was an essential feature of the terms of Union, and that it was in fact, as described by Sir Oliver Mowat, when speaking of it in reference to the old Canadian Provinces, 'So essential that without it Confederation could never have taken place.'

5. "The same difficulty confronted the Parliament of Canada when framing the Constitution of this Province, intensified, however, by the suspicions and jealousies aroused at that time among the native population of the settlement; and conformably to the spirit of said clauses in the Act of Union, as well as with a view to remove all grounds for such feelings on the part of the settlers, the difficulty was met by the educational clauses of the Manitoba Act, limiting the power of the Legislature under certain conditions to pass laws respecting education, and providing in some cases for an appeal to the Federal power on the part of the minority, against provincial laws relating to that subject and for remedial legislation by the Federal Parliament.

6. "Subject to these limitations the Legislature of this Province has the exclusive right to make laws with respect to education in the Province, and this House will at all times most zealously defend and maintain that right, within the true intent and meaning of the Constitution and to the full extent thereof, against any encroachment thereupon or interference therewith by the Federal authorities.

7. "The Legislature having in 1890 passed the School Law now in force in the Province, and the Roman Catholic minority having contested in the Courts the power of the Legislature to pass that law on the ground that it prejudicially affected their rights existing at the time of Union, this House declares that the recent judgment of the Judicial Committee of the Privy Council affirming the competence of the Legislature to pass that law is decisive and final, and sets at rest for all time the question of Legislative jurisdiction in so far as passing such a law is concerned.

8. "Without passing an opinion upon the question, which is one for a judicial rather than a political body to determine, whether there be still any right of appeal to the Federal Jurisdiction open to the

Roman Catholic minority, this House is conscious that the judgment of the Judicial Committee does not necessarily exclude such a right, while it is known to the House that such an appeal has in fact been presented and is now under the consideration of the Federal Executive.

9. "The entertaining of such an appeal, particulary if followed by any attempt on the part of the Federal Executive or Parliament to revise or modify the provincial law, even although such action may be strictly warranted by the constitution, is calculated, whether reasonably or unreasonably, to arouse feelings of bitter hostility against such action in the minds of the provincial majority, and it is liable to bring about a bitter contest upon a most delicate question between the Federal and Provincial powers. Such a contest, hitherto happily avoided under Confederation, threatens to involve consequences seriously affecting the harmony of the Union, and this House sincerely hopes that such a result may, by wise counsels, be avoided.

10. "This House protests that it has no desire to deprive any class of the community of any rights secured, or that were intended to have been secured, to them by the Constitution, and it has every disposition, as this resolution amply testifies, to do full justice to all classes, without interference at the hands of any other authority.

11. "And having regard to the history of the whole question, not only in this Province, but in the older Provinces of the Dominion; having in view also the undoubted success of the well-tried educational system of the sister Province of Ontario, a system which after a test of thirty years is still approved, subject to a few minor objections by all classes there; and believing that a like system ought to satisfy the Roman Catholic minority in Manitoba without returning to that which was in vogue prior to 1890, this House declares its readiness to make a settlement of the whole matter by adopting an educational system based on that of Ontario, modified however as far as need be, to meet the circumstances of this Province, and stripped of any minor features that may in a liberal view of it be deemed objectionable by this House."

I confess, Mr. Speaker, that I never in this House or elsewhere, rose to speak with a deeper sense of responsibility than I feel at this moment, and it is only from a clear sense of duty that I decided to bring before this House for its adoption a resolution of the character that I have just read, and that I venture to offer my reasons for so doing.

I did not have the privilege of being present to take part in the discussion that took place in this House in 1890, when the school act of that year was introduced and passed. At the same time, I suppose there was no one then in the House who did not know pretty well what my views were upon that question. Sir, it is not necessary for me here to say that in so far as the simple question of national public schools—non-sectarian schools—as against separate and sectarian schools is concerned, no man would go further than I would to have non-sectarian schools established if there were no serious objections or just cause which stood in the way. I am old enough to have taken a deep interest in that question when it agitated Upper Canada many years ago; I am old enough to remember the strong, the bitter fight that the Liberal party made on the question at that time. I formed my opinion then in favor of national and against separate schools, and I have never had occasion to change that opinion. And the views I formed at that time, against separate and in favor of national schools, are just as strong to-day as they were then. The question as to the propriety or the impropriety, the advantage or the disadvantage of adopting the one or the other of the two systems, national or separate schools, I am not called upon to-night to discuss. I simply mention the fact that in forming my own opinion in years past I preferred national as against separate schools.

We are confronted to-day with another issue which compels us to consider the question from another standpoint. Three years ago we established our present system of national schools, and the great majority affirmed its adherence to that system. We are threatened now with proceedings in the nature of an appeal to the federal powers which may lead to remedial legislation by the Dominion parliament, and which may also lead to the serious consequences that I have indicated in the resolution which I have just read, and I am going to trouble the House to listen to me while I state my views on this most grave and important question, not so much from a legal aspect as from an historical point of view. Honorable members will, I hope, bear with me

patiently while I go over the facts that I intend to recall in laying the matter before them.

The question now agitating the province is whether there is a right of appeal against the law open to the minority, and to this I first propose to direct attention. We have the undoubted fact that there is by the constitution such an appeal allowed under certain circumstances. To know that we need only just read the statute. Let me refer to the wording of the law. We have it set forth in our Manitoba act, passed by the Dominion parliament and ratified by the Imperial parliament. That act provides that our legislature shall have the exclusive power to pass legislation with regard to education, subject however to two limitations. The first of these limitations is as follows:—

(1) 'Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools, which any class of persons have by law or practice in the province at the union;"

And the next clause is in these words:

(2) "An appeal shall lie to the Governor-General in Council from any act or decision of the legislature of the province, or of any provincial authority, affecting any right or privilege of the Protestant or Roman Cathohc minority of the Queen's subjects in relation to education."

Now that is plain English. An appeal shall lie to the Governor-General in Council against any act of the legislature of this province affecting any right of the Roman Catholic minority in respect to education. That I say is perfectly plain. There is then an appeal in certain cases, and as that right to appeal exists by law under the constitution, the Roman Catholic minority clearly have a right to assert and present it in the manner prescribed. The only question is whether they can make out a case for such an appeal. If they do not they cannot succeed in it. But we must not deny their right to assert that they have such a case, nor can we deny their right to submit it for decision to the body to whom alone the appeal can be made. There are plainly two limitations, as you will observe, to our powers to legislate on the question of education. The first is that under certain circumstances our law may be bad, that is, ultra vires. The second is that in some cases in which we may indeed pass a law, there is an appeal against that law, after it is passed, to the federal power.

The first contention of the Catholic minority was that our legislation was ultra vires. Why? Because, they said, it prejudicially affected certain rights with respect to Catholic schools which they had enjoyed at the Union. Upon that question they went to the courts and have failed. The second contention was that in any event they had a right of appeal to the Federal power even if the law was in the meantime good. Upon that question they did not go to the courts, because the remedy provided by law is by way of appeal to the Governor-General in Council. I am not now discussing the question whether the minority have a case that will entitle them to succeed in their appeal. I simply desire to make it clear to honorable gentlemen that there is, beyond question, a right of appeal under certain circumstances, and that the minority have the right now to set up the contention at all events that it is a proper case for appeal. Referring to the two limitations upon our power to legislate on this question, I think it was Mr. Edward Blake who thus described the position from a provincial standpoint. "We in the provinces can, within the boundaries of these limitations, legislate on the question of education when, where and how we please. But if we out-step those boundaries in one certain defined direction our legislation is ultra vires—if we out-step those boundaries in another direction, it is subject to appeal to another jurisdiction."

Let us bear in mind in the next place why these limitations were created. The law plainly states that they were created for the protection of the minority, as between Protestants and Catholics. It is an extraordinary thing that we read so much from day to day in the newspapers about the so-called wickedness of interfering with the will of the majority in this matter. Will hon. gentlemen please bear in mind, Mr. Speaker, that this provision was inserted in the constitution for the one and only purpose of protecting the minority, and if there was not a minority to be protected and a majority to be resisted there would not have been such a law. The fact is that the protection of the minority is inseparable from our Federal system. The majority do not usually need protection. They can protect themselves as a rule, but the minority require the arm of the law to step in and

safeguard them. Take the Irish case. What is Mr. Gladstone doing to-day? He is standing before the House of Commons in England with a bill providing home rule for Ireland, one of the main and most essential features of which is the protection of the Protestant minority in that country. If Mr. Gladstone carries that measure and it becomes law a limitation will be placed upon the power of the parliament of Ireland to legislate with respect to all questions affecting the rights of the Protestant minority in that country. Will it be said that the Catholic majority in the Irish parliament will be justified in denouncing the Protestant minority because the latter may attempt to take advantage of that provision and to seek thereunder the rights and remedies that the constitution provides for them? Surely not. I am not now discussing the propriety or impropriety of the provisions in our constitutional Act. I am simply taking the law as it is, and pointing out that it is what it is, and that we are bound by it. This right of appeal from a majority is seen in ordinary life every day. In the field of sport, for instance, it may be at foot ball, or I care not what it is, there may be a division amongst the contestants on some question, with perhaps 25 voices against 5. The majority may declare one way, but the minority have their protection in an appeal to the umpire, and that one man's voice may overrule the majority and sustain the minority. So it is in every case in which a parliament makes a law for the protection of the minority This right of appeal does not depend upon the equality or inequality of the contestants, but simply on the question whether the law gives the right.

In the case we are considering, the law does certainly give the right under certain circumstances, and we cannot complain if the minority seek to avail themselves of it. The only question is whether the present circumstances justify the claim now asserted. Undoubtedly the majority have a perfect right to contend that they do not. It is equally clear that the minority have the like right to contend the contrary. The remedy sought by the minority, as I have said, was twofold. Petitions were sent to Ottawa in the spring of 1890, immediately after the Act was passed, asking first, that the Act be disallowed, and second, that an appeal be allowed under the clause that I have read. The Federal government had to deal with these two applications, and how did they do so? They refused the first. They said in effect "we will not disallow that Act, because the legislature of Manitoba had a right, prima facie, to pass it. It had the right if the case does not come within the limitation in the first clause. If the law is beyond the power of the legislature to pass there is no need for us to disallow it, and as to that question the courts will determine it, and to the courts you have already appealed. If it is bad, there is an end to it; it is waste paper, and there is no need of disallowing it. Whether it is appealable is a different question, which we are not going to decide now. Go on with your action at law first and if the court holds that the law is bad you have your remedy, but if the court holds the law is good we will then consider whether you have a right to appeal." To my mind that was plain common sense.

Now I want to point out to hon. gentlemen that there was a strict precedent for all this in the New Brunswick school case. That province, through its legislature, in 1871, passed a school Act, somewhat like the Manitoba school law, declaring that there should be no sectarian schools. The Catholics of New Brunswick went to the government of Canada and asked them to disallow that law, as prejudicially affecting them in relation to education. The first clause of the B. N. A. Act, it will be remembered, protected denominational schools only in so far as they existed by law at the Union. In this respect it was scarcely so wide as the Manitoba Act. The presumption being with the province, those who attacked the law had to show affirmatively that the legislature exceeded its powers. In New Brunswick, as it happened, there was no law providing for or authorizing denominational schools at the time of the Union, therefore it did not come within the case provided for in the constitution. Sir John Macdonald's answer was in effect:

'I find no law on the statute book of New Brunswick creating or sanctioning denominational schools at the time of the Union.'

There having been no such law existing at the time of the Union, no rights under such a law could be interfered with by the new law, and therefore he refused to disallow it. The minority were not satisfied to let the matter rest and they put in a petition to parliament for redress, and the question arose whether

parliament could interfere. There was no supreme court in existence at that time, to which, as now is the case, a question of that kind could be referred. It so happens that the wording of the British North America Act limits the right of appeal, as well as the objection of ultra vires, to cases in which there were rights existing by law, the right of appeal being extended to protect rights created by law after the Union as well as before it. Neither before nor after the Union, however, had there been any law sanctioning denominational schools in that province At the same time while New Brunswick had not separate schools at the time of the Union, recognized by law, they were practically allowed to exist; that is, although the law did not authorize them the administration of the law permitted them. And the majority in parliament said that though the law did not protect the Catholic minority these people, having practically enjoyed their separate schools ought to be allowed to continue them. When it was found that the minority had no legal redress, so far as the government could see its way to give it to them, who do you think was the man, above all others who stepped out of his place to help them? A man Sir, whose name has been for many years on the lips of the people of Canada, and on the lips even of my hon. friends who introduced this law of ours, as the purest and most highminded of Canadian Statesmen—that honorable and honored man, Alexander Mackenzie. And associated with him was that other great man, equally honored and admired by all Liberals, Edward Blake. They both spoke on the question, and contended that the theory underlying the settlement made at the Union was that whatever rights practically existed at the Union should never be taken away from the minority. Mr. Mackenzie and Mr. Blake were bold enough, honest enough and fair enough, to get up in the House and express their real views and their honest convictions in the matter. After a resolution had been introduced by Mr. Colby, a Lower Canadian Protestant, urging the legislature of New Brunswick to allow the Catholic minority in that province to continue in the enjoyment of the privileges that they practically had at the Union, whether it was by legal sanction or not, after that resolution I say was carried by an immense majority in the House, Mr. Mackenzie moved to supplement it by adding to it these words:

"And this House deems it expedient that the opinion of the law officers of the crown of England, and if possible the opinion of the judicial committee of the privy council should be obtained * * * with the view of ascertaining whether the case comes within the terms of the 4th subsec of the 93rd clause of the B. N. A. Act which authorizes the parliament of Canada to enact remedial laws," &c.

That is to say, the government felt that they could not interfere because the Catholic minority were not protected by strict law. Mr. Mackenzie was not satisfied that that was fair. He in his big, generous, honest, manly heart felt that he could not be satisfied to leave them without redress, and he declared that if there was any way at all by which these people could get what he called justice, he was going to help them to get it and he therefore moved that that additional clause be added to the Colby resolution, so that if at all possible some means might be found by which the parliament of Canada might interfere and pass remedial legislation. That clause, too, was carried by an immense majority, the Liberals of Ontario voting for it. Mr. Mackenzie would give the minority all the assistance he could. He thought it was a proper thing to give them their rights—not only what they had in strict law, but all that they had by practice enjoyed. He was built that way. He said in effect: "as there is a doubt whether we have power to aid the minority, we will submit it to the law officers in England and to the privy council if possible to see if we cannot give them redress." Mr. Dalton McCarthy thinks it absurd, as does also our own attorney-general, to submit such things for judicial enquiry. But Mr. McCarthy is not Alexander Mackenzie. Let me remind you what Mr. Mackenzie's position was in the House at that time. He was the leader of the opposition, while Sir John Macdonald was the leader of the government. When this question—the most troublesome the then government ever had to deal with, apart from the Pacific scandal—came up, Mr. Mackenzie, had he been a different man to what he was, could have raised a religious cry; he could have mounted the protestant horse and could have ridden into power. But he thought justice and honor and fair dealing of more importance than office; and would sacrifice any chances that he had rather than take

advantage of a religious cry to get into power.

The opinion of the law officers of the Crown was in due course obtained and it was just the same as that of Sir John Macdonald, which he had previously given. It could not very well be otherwise. The law officers could find no law on the New Brunswick statute books which gave the minority any legal rights at any time. The government also enquired whether the question could be heard before the judicial committee of the privy council, and the answer was that it could not, unless the question came up before them in a law suit. Let me now lead you to the next step. This answer came to the parliament of Canada as I have just stated, in response to Mr. Mackenzie's resolution, that nothing could be done in the Old Country. Did Mr. Mackenzie even then give up the fight for the Roman Catholic minority? No. He was the sort of man who always fought for the weakest side, and the minority, so long as he thought it the side of justice. The government of New Brunswick found that their act of 1871 was faulty in some respects, the tax by-laws under it were illegal and they had to pass another act, making these by-laws valid. They passed this act in 1872. Well, when this answer came back to the parliament of Canada, Mr. Mackenzie and his followers again said "we are not satisfied with that. We will allow the minority to frame a lawsuit, which they can take into the courts—like the Barrett case in our time—and enable them to get a legal decision." But Mr. Mackenzie with his followers went a step further. He urged that until the law suit should be decided, the legislature of New Brunswick should not put the act of 1871 into force, and that legislature refusing to delay the operation of the act, Mr. Mackenzie and his followers voted for the disallowance of the act of 1872, under which alone the act of 1871 became effective. I dare say I am speaking of facts not known to some of my honorable friends, and I am sorry more of them are not in their places to hear these facts. I ask you, sir, where is the distinction between the action of the then government in the New Brunswick case and that of the present Federal government in this case? There was the same refusal to disallow; there were the same steps to get up a lawsuit for a test case; there was a consideration of the question of appeal for remedial legislation and what think you of this, sir, the government of that day actually paid the costs of the New Brunswick minority. It was thought a reasonable thing that the minority, having come to get redress, and it being desired by the government at Ottawa that the question should go to the courts to obtain a judicial opinion upon it, it was thought nothing but reasonable, I say, that the government should pay the costs of obtaining that opinion. As to the suggestion that the Dominion Government are pursuing a policy of delay I am not called on here to express any opinion upon it.

Now, Mr. Speaker, an attempt is being made to lead the public to believe that this proposed appeal of the Manitoba minority is an appeal to the federal powers against the decision of the privy council. Mr. Dalton McCarthy, in his Stayner speech, spoke of "a so-called tribunal undertaking to reconsider, rehear and possibly to reverse the decision of the privy council in favor of Manitoba." He surely knows very well that this is not an attempt to revise or reverse the decision, and that it has nothing in fact to do with that decision, excepting that that decision has the effect of leaving no other remedy open to the minority than that by way of appeal.

There is another mistake Mr. McCarthy makes, and that is saying that the privy council decided that the legislature had a right to do away with separate schools. The judgment of the privy council did not say that; it said that Roman Catholics had exactly the same right now to keep up their separate schools that they had at the time of the union. The privy council said, indeed, that the Catholics of Manitoba had an undoubted right to be protected in the enjoyment of every privilege that they practically enjoyed at the union. But they said the Catholic schools at the union were only voluntary schools, that there were no state grants given to them at that time, and that being the case, they are in the same position to-day as they were then, and that the refusal to give them state grants now left them in practically the same position that they were in at the time of the union.

Again Mr. McCarthy said:—

"Everybody supposed that as a court of the highest character, a court of the highest and greatest renown, had pronounced in favor of the constitutionality of the Act of the province, that that would be the last of it." How could Mr. McCarthy have expected that that would be the last

of it, knowing as he did that the appeal was actually before the government three years ago? He says everybody thought so. Well, I certainly never thought so. Three years ago nearly, in a letter I wrote on the subject, I pointed out the certainty that the very thing that has happened now would happen if the decision should be for the province. I will read for the information of the House what I then said: "Assuming that the strictly constitutional question—that is the question involved in the Barrett case—is decided in our favor, I see another and greater difficulty before us. There is a further clause in the Act of Confederation, re-enacted, with some modifications in the Manitoba Act, which affects the question very seriously." I proceeded to quote the clause of the B. N. A. Act giving a right of appeal and then showed how that clause was as I contended, made even more clear in the Manitoba Act in favor of an appeal. And I said: "Once more we must give the legislation a meaning, and who can doubt that it was intended, and that it has the effect, to give to the Catholic minority in Manitoba an absolute right to appeal to the governor-general in council against any legislation affecting their rights in relation to education. * * Granting once more that there is a possibility of a decision that sub-clause one, even as modified in the Manitoba Act, does not restrain us altogether from legislating in the direction of abolishing separate schools and creating a system that does not permit of their existence, is there any doubt that under sub-clause three the Roman Catholics have a clear right of appeal from our new law. Failing to succeed on the constitutional question is there any doubt that they will make the appeal?"

I say for my part that I will be no party, and I ask this House to declare by this resolution, that it will be no party, to the re-opening of the privy council decision. The Catholic minority chose to go to the courts in the way they did to seek that particular form of redress, and the court has declared (being very careful however, to say that they do not give any opinion as to the justice of the complaint of the minority), that under the law they could not give them that redress; and we are justified in opposing any proceedings that will re-open that question. At the same time I say there is still left upon the question of appeal which has not been effected by that decision.

Now I wish to point out to you that other men saw that such an appeal as this was likely to arise if Mr. Dalton McCarthy never saw it; and that greater men than he saw it, and that they most wisely saw fit to provide, three years ago, for this very appeal being fairly and properly considered and adjudicated on. As soon as we passed this law here in 1890, petitions were sent to Ottawa, as I have stated, both by way of appeal and for disallowance. With these petitions as I have said the government had to deal. There was in the parliament of Canada at that time a man of commanding position, a giant in intellect, a man of wide and liberal views, whom most of us in this House were proud to own as our leader for many years. I refer to the Hon. Edward Blake who at that time was not bound to any party, but who occupied an independent position in the House, while in full accord generally with the party of whom Mr. Laurier had became the honored leader. Sir John Macdonald was then at the head of the government, and when the question of the Manitoba school case came up. Mr. Edward Blake and Mr. Laurier could have combined together to make trouble for Sir John. But what did Mr. Blake do? He at once moved a resolution making express provision for the disposition of this matter. That man whose position was untrammeled, a man of high character, lofty statesmanship and pure aims, foresaw a most serious trouble arising, and he rose to the occasion. I am going to read the resolution which he moved in the Commons and will follow it with some quotations from the speech which he then made upon it. On the 29th of April, 1890, Mr. Blake moved:

"That it is expedient to provide means whereby on solemn occasions touching the exercise of the power of disallowance, or of the appellate power as to educational legislation, important questions of law or of fact may be referred by the executive to a high judicial tribunal for hearing and consideration, in such mode that the authorities and parties interested may be represented, and that a reasoned opinion may be obtained for the information of the executive."

That was the resolution, and I am going to read you something from the Hansard report of his speech. I want first however to tell this House, that this resolution was moved by Mr. Blake mainly for one reason, and one reason only, as his speech indicates, and that was to facilitate the settlement of the Manitoba

school case, and that especially in view of the presentation of the appeal to Ottawa, that we have now before us. At page 4084 of the Hansard 1890, Mr. Blake is thus reported: "Recent, current and imminent events have combined to convince one that it is important in the public interests that this motion should receive attention during this session, else I should not have propounded it at this time * * The general notion that the executive the legislative and the judicial departments of government ought to be so far as practicable separate and apart is one held by many of the most eminent constitutionalists, as a fundamental principle. * * The absolute union of these departments * * * is absolute despotism. * * The degree to which, without overweakening or overcomplicating the action of the machine, you can separate them, marks the degree to which, in this aspect of a constitutional system, you have attained perfection. I do not say that they can be absolutely and always separated. It is not so. * * * I by no means propose to withdraw from the executive, its duty. * * * I make no attempt at this time to discuss the propriety of these constitutional provisions (referring to the two matters, disallowance and appeal that came within the scope of his resolution.) * * * My object is without discussing how far they are wise, taking them as they are, to facilitate the better working of them."

Mr. Blake then goes on to explain why, under the first clause of his resolution, he wishes the question of exercising the power of disallowance as to school legislation to be submitted to a court. He points out that if an act is ultra vires it is void, and "it is now generally agreed that void acts should not be disallowed, but should be left to the action of the courts." That is just what Sir John Thompson, as Minister of Justice, said when he gave his decision on the question a year later. Continuing, Mr. Blake said, "The other class of cases to which my motion alludes is that of the educational appeal which arises under section 93 of the Constitutional act, and under the provisions of the Manitoba act."

He concludes therefore that the question whether an act is ultra vires or not is a question of law for the courts, and referring once more to the Manitoba appeal case he says, "Again, when you act on the appellate educational clauses, as, for example in the case of Manitoba, the very case which is now in a sense pending, as to whether recent legislation be within the rights of the provincial legislature, and whether any relief is due under the appellate clause to those who claim it, you have a legal question, or rather in this case a mixed question of law and of fact, * * and it seemed to me that in this particular instance I was constrained to provide for an emergency which may arise."

Dwelling still further on the danger of a political body like the Dominion executive having to decide delicate questions like these without the aid of a judicial body, Mr. Blake proceeded: "Now I aver that in the decision of all legal questions it is important that the political executive should not, more than can be avoided, arrogate to itself judicial powers, and that when in the discharge of its political duties it is called upon to deal with legal questions, it ought to have power in cases of solemnity and importance, where it may be thought expedient so to do, to call in aid the judicial department in order to arrive at a correct solution." * * * "My own opinion is that wherever, in opposition to the continued view of a provincial executive and legislature, it is contemplated to disallow a provincial act as ultra vires, there ought to be a reference and also that there ought to be a reference in certain cases where the condition of public opinion renders expedient a solution of legal problems, dissociated from these elements of passion and expediency which are rightly or wrongly often attributed to the action of political bodies. And again I would recommend such a reference in all cases of educational appeal cases which necessarily invoke the feelings to which I have alluded and to one of which I am frank to say my present motion is due."

Thus we find Mr. Blake earnestly advising a reference to a judicial body in all cases of educational appeal, and he frankly tells the House that he introduced his resolution with special reference to the Manitoba school case and in order to provide machinery for the submission of that very Manitoba appeal. So desirous was he indeed that full consideration should be given to the appeal and a sound conclusion reached, that he particularly dwelt on the necessity for all parties taking part in the argument before the tribunal. Let me quote his words: "I attach little comparative importance to judicial solutions, reached without argument. * * * The experience of mankind has established

as the essential ingredients for the attainment of justice between man and man the opposing arguments of the parties before a tribunal, and the reasoned judgment of that tribunal. * * * Let the opposing views be stated, presented and sifted in public and in the presence of the parties, so that the best material for consideration will be obtained." His idea then was that all parties interested ought to appear before that tribunal and discuss the question, and I would have said to my honorable friend, the Attorney-General, if he were in his seat, that I sincerely hope he will take the advice of Mr. Blake, and recede from the unjustifiable position of ignoring the appeal, which his organ has authoritatively declared he intended to take and which he has thus far taken, and I trust if the matter goes to the Supreme court he will be represented there, for I fully believe as Mr. Blake has pointed out that the only way to get a satisfactory solution is to have both parties represented.

And now I desire to point out to honorable members that this resolution, making provision on the face of it, and in accordance with the express declaration of the mover, for this identical case of ours, received the unanimous vote of the Commons. Mr. Dalton McCarthy, I have no doubt, was there, and our own minister of public works was no doubt there too, and proudly cheered Mr. Blake when he stood up and urged that prudent disposition of the Manitoba school case. Mr. Blake's advice could not be carried out that session by act of parliament as the end of the session was then near at hand. One speech only I may say was made in reply to Mr. Blake. It was made by Sir John Macdonald, and it was indeed an appreciative speech in which he thanked Mr. Blake most warmly for his wise and timely counsel. There were however two points made by Sir John. The first was that in every case provision should be made for an appeal to the privy council, so as to get a decision and an opinion from the highest court in the land. The second point was that no matter what the opinion of the court might be, such opinion should only be advisory, and that the government should be responsible for their action, so that there should be no withdrawing of the question from executive responsibility. When we hear so much said to-day about the Federal government shirking their responsibility in the matter, by placing it on the shoulders of the judges, we are forced to conclude that the people who talk that way have never read the speech or resolution of Edward Blake advising the reference to the judges, or the statement of Sir John Macdonald that such reference should not lessen executive responsibility.

In 1891, two years ago now, a law was passed by the Dominion parliament in the terms of Mr. Blake's resolution. It made provision for referring, as Mr. Blake suggested, to the Supreme court for its opinion, any appeal that might be made to the government under the educational appeal clause. It provided also, as suggested by Sir John Macdonald, that any opinion of the Supreme court may be brought by way of appeal before the privy council. And I must not omit to state that it expressly provides that the opinion of the judges is to be only advisory. It does not and cannot therefore enable the government to escape responsibility.

Now when I remind you, Sir, that this Act as well as Mr. Blake's resolution on which it was based, received the unanimous support of the House of which Mr. Dalton McCarthy was a member, and that presumedly they must have received his personal support, it seems strange that only a few days ago he used these words in a letter which he wrote to a Toronto paper: "Public interest is centered more on the novel and unexampled proceedings that are now pending before the privy council at Ottawa, with a view, if it be possible, to find a reasonable pretext to overturn the decision of the judicial committee of the privy council. * * If Sir John Thompson's view is correct, that the Manitoba question is to be considered judicially, then no matter what conclusion the government adopt, there is complete freedom from responsibility. The ministers cannot be called to account in parliament, even though the order-in-council as a remedial measure should direct the legislature of the province to repeal its school acts for 1890, for a judge or judicial tribunal is not answerable for his or its bad law." Can it be possible that Mr. McCarthy had forgotten the action of the House in 1890 and 1891 as well as his own approval thereof? I now wish to give you a quotation from an interview granted by my hon. friend, the attorney-general, to a "Tribune" representative on the 30th of last November: "It is said," remarked the attorney-general, "that the Dominion government assumes

the power to act as some kind of a court of appeal in this matter, and to receive petitions, and to hear arguments." And presently he added, "We deny the right of the Dominion government to interfere in this matter in any way whatever. On no ground of principle can such interference be justified. Further, the Dominion government has no legal power to take such action. By the constitution the power lies wholly within the jurisdiction of the provincial government. The privy council dealt with that very point. To appeal from the privy council to the Ottawa ministry would be the height of absurdity."

Surely my honorable friend the attorney-general can not have been wholly unaware that three years ago the Commons by a unanimous vote, in which one of his own colleagues took part, gave a mandate to the government to deal with this very question, by referring it to the courts for advice, and that again two years ago the parliament of Canada with equal unanimity, supported by the same colleague, had in an act provided the machinery for carrying out that mandate.

I now turn to another and a different phase of the question. I suppose it will not be denied that there is a general opinion among the protestant majority in this province that the educational clauses in the Confederation act, protecting or purporting to protect the Catholic minority, were incorporated in the constitution at the instance of Roman Catholics. I think I am safe in saying that it is the universal impression in protestant circles that the Romish hierarchy, or Sir George Cartier, managed shrewdly to protect Catholic interests by the insertion of those clauses. And how often have we heard it remarked that if the public men of the protestant faith had not failed in their duty, through pandering to the Catholic vote, these clauses would never have appeared in the constitution. Just to give you an idea that I am speaking correctly as to what the general impression is, I will quote from Mr. Dalton McCarthy. Addressing a great protestant meeting in Ottawa in December of 1889, he said:—"What have we to boast of as the outcome of the act of Union? A separate school system imposed on the people of free Ontario by their own votes? No. Search the records and you will find that the act for the settlement of the separate school question was imposed on the people of the Upper Province by the vote of the people of the Lower Province, and against the will of the people of the Upper Province." It is entirely correct to say that it was by the votes of the French representatives of Lower Canada, and against the votes of the representatives of Upper Canada, that the separate school system was finally settled in Upper Canada in 1863, and so far I quite agree with the speaker. Mr. McCarthy then takes up the education clauses in the B. N. A. Act and continues:—"Search the B. N. A. Act and you will see that it was attempted to be fastened on you for all time by this organic law, the B. N. A. Act, as a part of the bargain made at the time of Confederation. That and similar enactments have we to thank for the present state of affairs; that is the result of Lord Durham's well meant labors. He brought us together, thinking that the English majority would ultimately govern; he brought us together with the belief that he was doing the greatest possible benefit to us and to them. We came together; we assembled in a common parliament, but by the skilful direction of the French Canadian vote, and the desire for power among the English and consequent division among them, the French Canadians were ultimately able to place their feet on our necks and impose laws on us contrary to our will, and we came out of the partnership taking the smaller share of the assets." Possibly this language may be open to two meanings, but I understand the statement that the separate school system was "attempted to be fastened on us" by the B. N. A. Act, to mean that it was something sought to be fastened on Protestants by Catholics.

That may be Mr. Dalton McCarthy's opinion, but I want to say if that be his meaning that there is not a word of truth in it; and to prove that I am right let me give you in a few words the situation of the Protestant minority of Quebec before the Union. Quebec, of course as you all know, is filled chiefly by a French Canadian population. The immense majority are French Roman Catholics. They had in the province two systems of schools as they had in this province before 1890. In Ontario the Catholics had their separate schools; in Quebec the Protestant minority had their dissentient schools. When the proposition for Confederation came up the Protestant minority in Quebec were exceedingly afraid that they would be put under the control of the Catholic majority of that province in respect to edu-

ratich. They made two demands as a condition of union, first, that there would be a provision in the constitution whereby any rights that they had at the Union in respect to their schools should never be taken away from them, so that the legislature of Quebec should have no power to interfere with these rights, and second, that before they entered the Union the school law should be amended so as to remove certain objections then made to it by the Protestant minority. They demanded that the school law should be improved so as to satisfy them as a minority before the Union, in order that in the future they would have the law as amended guaranteed to them. One of the changes they demanded, as I retollect the history of it, was that they should have a separate board of education. Now it is fair to state that the position of the Protestant minority in Quebec was in my opinion different altogether from that of the Catholic minority in Ontario In the latter the system of the majority was non-sectarian, in Quebec it was a Catholic system. It was natural therefore that the Protestant minority in Quebec should be anxious about their position in the Union. I now propose to show the demand made by that minority for protection against the provincial legislature.

Mr. T. H. Holton was then, as you will remember, one of the leading Protestants representing Lower Canada. Speaking in the Confederation debate on behalf of that minority at an early period in the debate he said: "Another question which he had proposed to put had reference to the educational system of Lower Canada. The honorable gentleman (Sir John Macdonald) must be aware that this was a question on which there was a great deal of feeling in this section of the province amongst the English-speaking, or the Protestant class of the population. Among that class there was no phase or feature of those threatened changes which excited so much alarm as this very question of education. Well the minister of finance had said that the government would bring down amendments to the school laws of Lower Canada, which they proposed enacting into law before a change of government should take place, and which would become a permanent settlement of that question. The question he desired to put was whether they intended to submit these amendments before they asked the House to pass finally upon the scheme of Confederation, as it would undoubtedly exercise very considerable influence upon the discussion of the Confederation scheme, and probably in the last resort from several members from Lower Canada." On a subsequent date Mr. Holton said:

"The English Protestants of Lower Canada desire to know what is to be done in the matter of education before the final voice of the people of this country is pronounced on the question of Confederation." To this statement Sir John Macdonald replied:— "There was a good deal of apprehension in Lower Canada on the part of the minority there as to the possible effect of Confederation on their rights on the subject of education and it was the intention of the government, if parliament approved the scheme of Confederation, to lay before the House this session certain amendments to the school law to operate as a sort of guarantee against any infringement by the majority of the rights of the minority in this matter. * * * Before Confederation is adopted the government would bring down a measure to amend the school law of Lower Canada protecting the rights of the minority."

Mr. Holton was not satisfied with that for a few days afterwards he returned to it again and said, "I would like to ask the Hon. Minister of Finance as to the course to be pursued in reference to the Lower Canada school law which was promised to be introduced this session." To this the like reply was made as before, but still Mr. Holton was not satisfied and repeatedly thereafter he brought up the question again, indicating the intense interest felt in the situation by the Protestants of Lower Canada.

Hon. Mr. Sanborn, another Protestant representative from Lower Canada, gave expression to the same feeling as follows:—"The English, who were a fourth of the population, and who, by habit and tradition, had their own views of public policy, were left entirely without guarantee other than the good feelings and tolerant spirit of the French. Was this safe?"

In the hope of disquieting these fears of the Protestant minority from his province, Mr. D'Arcy McGee, an Irish Catholic from Lower Canada said:—"I have no doubt whatever, with a good deal of moderation and a proper degree of firmness, all that the Protestant minority in Lower Canada can require by

way of security to their educational system will be cheerfully granted to them by this House."

The Hon. Geo. Brown, the noted champion of national schools in Upper Canada, had given special attention to the education clauses, and he recognised fully the deep anxiety felt in Lower Canada on the question. Referring to the satisfaction that existed in Upper Canada with the existing arrangements as to education, he declared that "it was not so as regards Lower Canada, for there were matters of which the British population have long complained and some amendments to the existing school act were required to secure them equal justice. Well when this point was raised gentlemen of all parties in Lower Canada at once expressed themselves prepared to treat it in a frank and conciliatory manner with a view to removing any injustice that might be shown to exist; and on this understanding the educational clause was adopted by the Confederation."

Sir. E.P. Tache, then Prime Minister, in further reply to the fears expressed by Mr. Sanborn, said: "Mr. Sanborn gave expression to the fear that the Protestant English element of Lower Canada would be in danger if this measure should pass. He said as much as this, that in the legislature of Lower Canada acts might be passed which would deprive educational institutions there of their rights, and even of their property. But if the lower branch of the legislature (that is the provincial one) were insensate enough and wicked enough to commit some flagrant act of injustice against the English Protestant portion of the community they would be checked by the general—that is the federal—government."

Hon. Mr. Dorion, the chief of the Rouge party of Quebec, referred to the demand made by the Protestants of Lower Canada, for protection, and expressed his sympathy with them in these terms: "There is at this moment a movement on the part of the British Protestants in Lower Canada to have some protection and guarantee for their educational establishments in this province put into the scheme of Confederation, should it be adopted; and far from finding fault with them, I respect them more for their energy in seeking protection for their separate interests. I think it but just that the Protestant minority should be protected in its rights in everything that was dear to it as a distinct nationality, and should not lie at the discretion of the majority in this respect, and for this reason I am ready to extend to my Protestant fellow-citizens in Lower Canada, of British origin, the fullest justice in all things, and I wish to see their interests as a minority guaranteed and protected in every scheme which may be adopted."

Hon. Mr. Laframboise, a French Catholic from Lower Canada, expressed himself in this candid way: "There is one certain fact and that is that the Protestants of Lower Canada have said to the government 'Pass a measure which shall guarantee to us the stability and protection of our educational system and of our religious institutions and we will support your scheme of Confederation; unless you do we will never support you, because we do not wish to place ourselves at the mercy of a local legislature three fourths of the members of which will be Catholics.' I admit that in doing this they have only done their duty; for who can say after all what ten years may bring forth."

Sir John Rose, one of the most prominent representatives of the Lower Canadian minority, expressed his sense of the keen feeling that prevailed among his people in these terms: "It is a very grave and anxious question for us to consider, especially the minority in Lower Canada, how far our mutual rights and interests are respected and guarded." Again Sir John Rose returns to the subject in these words, referring to the Protestant minority: "I know you must satisfy them that their interests for all time to come are safe, that the interests of the minority are hedged round with such safeguards that those who come after us will feel that they are protected in all they hold dear."

And again he says: "Looking at the scheme then, from the stand-point of an English Protestant in Lower Canada let me see whether the interests of those of my own race and religion in that section are safely and properly guarded. There are certain points upon which they feel the greatest interest, and with regard to which it is but proper that they should be assured that there are sufficient safeguards provided for their preservation."

And once more Sir John Rose declares: "I believe this is the first time almost in the history of Lower Canada that there has been any excitement or movement or agitation on the part of the English Protestant population of Lower Canada in reference to the common school question.

(hear, hear) It is the first time in the history of the country that there has been any serious apprehension aroused amongst them regarding the elementary education of their children. * * I would ask my honorable friend, the attorney-general East, whether the system of education which is in force in Lower Canada at the time of the proclamation is to remain and be the system of education for all time to come; and that whatever rights are given to either of the religious sections shall continue to be guaranteed to them." To this last question of Sir John Rose, Sir George Cartier answered :—"It is the intention of the government that in that law there will be a provision that will secure the Protestant minority in Lower Canada such management and control over their schools as will satisfy them." Col. Haultain, a militant Protestant from Upper Canada, said :—"An opposition to this scheme has been very decidedly expressed by a certain section of the Protestant minority in Lower Canada. I am aware from personal intercourse with many gentlemen belonging to that section of the community that they do feel a very strong aversion to this scheme because, as they say, it will place them at the mercy of the French-Canadians. * * And I must say, for my own part that, I do think the Protestant minority have some grounds for this fear. * * * I speak what I know when I say there is a feeling of distrust on the part of a great many of the Protestants of Lower Canada."

I have troubled honorable members, Mr. Speaker, with somewhat long extracts from the Confederate debate. I wished to impress on the House that throughout that discussion, from the beginning to the end of it, there was hardly a question raised about the rights that were to be protected by these educational clauses, except for the Protestants of Lower Canada. Hardly one word. The only suggestion that was made on behalf of Roman Catholics was, that if, in answer to the demands of the Protestants of Lower Canada these safeguards were given, it would only be fair that the Catholics of Upper Canada should have the same protection accorded them. And the broad and fair and tolerant spirit of Protestants like George Brown and Galt, Mackenzie, Macdougall and others prompted them to provide as a matter of course that the same rights which were conceded by Catholics to the Protestant minority, at the urgent demand of the latter, should be conceded to Roman Catholics in the provinces where they were in the minority. Thus it was that the settlement was aimed at in a manner satisfactory to all classes. The House will now see how utterly far from the truth is the oft repeated and generally accepted statement that the educational clauses of the Confederation act, protecting the rights of the minority in respect to education, was a concession to Roman Catholic demands.

I now desire to refer to another circumstance connected with this same matter—a circumstance even more striking than that I have referred to—and I dare say some of my honorable friends on the government benches had not heard of it.

The debate I have quoted from took place in the old parliament of Canada in 1865, some time before the Confederation act was adopted. That parliament was then discussing the Confederation resolutions that had been agreed on between the two Canadian provinces and the Maritime provinces. The provision with respect to education, embodied in these resolutions, protected only those rights of the minority which existed at the time of the union, but there was not one word in them indicative of an intention to preserve under Confederation any rights that they might acquire afterwards, although such a provision was afterwards put in the act. How did the change come to be made? Here's an interesting bit of history that I want to tell you, and you have only to study the debates on the question to find out the truth of it. I read you the promise made by the government in 1865, that before that session was over they would amend the legislation so as to satisfy the Protestant minority. There was a calamity befell the government however, that prevented this being done. There was a defeat of the Union scheme in New Brunswick, and the legislature had suddenly to prorogue without passing the amended law. The Protestant members from Lower Canada protested, but Sir George Cartier, Sir A. T. Galt and the rest of the leaders said, "We promise you we will pass the law next session," and they had in fact another session before the Confederation Act was passed. Well the parliament met in 1866 and a bill was introduced to amend the law as desired by the Protestant minority. What became of it? Somebody in the House got up and moved that if that privilege be given to the Lower Canadian Protestants a like privilege ought to be

granted to the Catholics in Upper Canada. The Protestant majority of Upper Canada kicked against this, and the government seeing that they would be defeated on it either withdrew the bill, or it was defeated on coming to a vote. They failed at all events to carry out the promise given the Protestants in Lower Canada. What was done about it? It is worth while to recall those interesting events in connection with our position to-day. The government were thus placed in a most awkward position. The Protestant minority of Quebec had positively refused to come into Confederation if they could not get their law amended, and they had been told that they would never be asked to come in until they got it, and unless it was guaranteed to them for all time to come. The difficulty thus threatening the Union was solved by Sir George Cartier the great chief of the Catholic Frenchmen representing Lower Canada. He said to the Protestant minority of his province in effect, "I ask you Protestant gentlemen of Lower Canada to take my word for it, and I now give you my pledge, that when Confederation is formed, and when Quebec has a parliament of its own, one of its first acts will be to put upon its statute book the law that we could not get on our statute book here to-day." That I say was the promise given by that French Catholic chief, and the Protestants of Lower Canada took his word for it. They believed that the promise of a public man, solemnly given on a solemn occasion and respecting a solemn claim of a section of the people, would be solemnly respected, and it was respected. I don't know whether it was in the first or the second session of the Quebec legislature that it was done, but that promise was carried out in good faith. Sir George Cartier was himself elected to that legislature, and I believe he sought election with the one purpose of being in a position to carry out his solemn pledge, and so he got the promised law passed. The educational clauses adopted in 1865 provided as I have said only for the safeguarding of rights the minority had at the time of the Union. Sir George Cartier therefore found himself in this position. He could not, before the establishment of the Union, give the Protestants of Quebec what he had promised to give them, he had to go and get the legislature of Quebec to give it. But the Confederation scheme as then settled did not provide for protecting or safeguarding rights that might be created by the legislature of Quebec, after the Union. To effect this purpose it was necessary to modify, or rather to widen, the educational clauses. When therefore the government completed their draft Confederation Act they inserted in it this further provision, that not only should the rights of the minority at the time of the Union with respect to schools be perpetuated and never taken away from them, but that if any legislation was passed with regard to them after the Union by any provincial legislature the rights created thereunder could never be taken away from them.

I have attempted to show you, Mr. Speaker, and I trust I have offered sufficient evidence to satisfy the House, that there has been a misapprehension, to say the least, as to the cause of these clauses appearing in the Confederation Act for the protection of the minority as to education. I hope I impress some of the hon. gentlemen present, at least, that these provisions were not, as some have thought, the work of either pope or arch bishop, but that they were placed in the statute with a view chiefly to protecting the Protestant minority in the maintenance of what they thought their legal and just rights. I want to know if it will ever be charged again, in Manitoba at least, that this was a scheme of the Roman Catholics. And yet I read a few minutes ago from a speech of Dalton McCarthy's delivered in 1889 in which he said it was. I have another speech of his here delivered in February 1890, in which he uses the following language to the same effect:—"I do hope that before long the delegation from the province of Ontario will call on this House for its aid to blot out the separate school clause from the British North America Act, which limits and fetters the people of that province. That clause was carried by a majority of French Canadians, and was imposed upon the people of Ontario against their will." * * * "and I am sorry to differ from my hon. leader on that question. He tells us—and I never feel more humiliated than when I hear him speak on that subject—that he participated in imposing that separate school system upon us." If Mr. McCarthy was speaking of the imposition of the school system on Upper Canada in the first place, he was speaking the truth, but if he applied it to the B. N. A. Act his statement was utterly without foundation.

As a matter of fact Lower Canadians were more strongly divided—I mean their

leading men were—against Confederation, than Upper Canadians were. It was the Upper Canadian members indeed that carried Confederation, and many of the leading Frenchmen of Quebec were against it, so that it could not be true, as suggested by Mr. Dalton McCarthy, that these limitations in the B. N. A. Act were imposed upon us at the dictation of Lower Canada.

I wish now to read another interesting bit of the history of that time, not relating to the School Question, but shewing the spirit of the concessions demanded by, and provided for the, Protestant minority of Quebec. We have heard something about the representation of the French minority of this Province in our Legislature having been at one time excessive in proportion to their numbers. As a matter of fact, it arose from the circumstance that the French speaking settlers were mainly in the older districts, which had an undue number of members, and the charge of over representation applied equally, therefore, to the Protestant population in the same districts. At all events the evil, so far as it was an evil, was remedied in 1888. And it will be remembered that, amongst the French speaking minority, there was a natural feeling of alarm at their loss of influence in the Legislature, which would follow from the application of the remedy. Well, I wish to remind the House that a like feeling of alarm stirred the minds of the Protestant minority in Lower Canada, when they were invited to enter the Union. The Protestant population, outside of Montreal, was mainly settled in the district known as the Eastern Townships. At that time they controlled twelve seats. Under the terms of Union the Provincial Legislatures were empowered to re-arrange the provincial constituencies, as regards the Provincial Legislatures. The Protestant minority of Quebec were afraid that the Legislature of that Province might cut and carve the constituencies therein, so as to weaken the Protestant representation, and they wanted to be protected by the Confederation Act, so that the Catholic majority could not, by any act of redistribution, interfere with their representation. And they got that protection. It is in the statute book to-day—in the Act of Union. It was provided in the Constitution that, in respect of these twelve counties, the Legislature of Quebec should have no power whatever to make any alteration, unless the bill was supported by a majority of the twelve members themselves. That is, against the votes of the twelve Protestant representatives of Lower Canada, and against their own wishes, these constituencies could not, by the Legislature of Quebec, be interfered with. Here was a most remarkable instance of protection to a minority, and that provision, like the provisions in Mr. Gladstone's Home Rule Bill, was intended for the protection of the Protestant minority.

But there was placed in the Constitution, at the demand of the Prostestants of Lower Canada, a still more remarkable provision than even that, for the protection of the minority, to which I must not fail to draw attention. Power was being given by the Union Act to the Provincial Legislatures with regard to passing laws with respect to immigration, and the Protestants of Quebec saw that the Legislature of that Province, under French and Catholic influence, might promote immigration in such a way as to encourage immigration of their own classes only. And so it was that, at the demand of the Protestant minority of Lower Canada, there was a provision put in the Confederation Act, whereby, while the local legislatures may pass laws with respect to immigration, the Dominion Government is also given power to legislate with respect to the same subject. And it is provided that the local law falls to the ground, so far as it conflicts with any law of the Dominion, with respect to that subject. In other words, the laws of the province, with respect to immigration, are subject to revision by the Federal Parliament. The discussions of the time shew that, as I have said, this was done at the instance of the Protestants of Quebec, and Parliament yielded to their demand.

But I must return to the subject before the House, having made this digression just to shew that even in other matters than the question of education, very special and peculiar safeguards, for the protection of the minority, were provided in the Constitution, and that mainly for the protection of Protestants. Coming once more to the question of education, I desire to draw attention for a moment to the terms of the educational clauses in the B. N. A. Act limiting the powers of local legislatures to pass laws with respect to that subject.

The language of these sub-sections plainly shows that their operation is not limited to any particular part of the Dominion as then created. The clause as to the right of appeal is such that it

may be applicable to all the provinces. It was a settlement of a question that had disturbed the statesmen of old Canada for many years, and it was thought best that there should be no limitation as to its application, except this, that it should only apply to provinces in which there were separate schools legally existing at the union, or wherein they should be legally established afterwards. Sir Oliver Mowat tells his people in Ontario that that settlement of this question was an essential element of confederation, so essential that without putting these provisions in the Act, confederation would not be to-day an accomplished fact, and that we would not have in Manitoba or in any of the provinces of the Dominion, a Provincial Legislature.

I have endeavoured to show the House, Mr. Speaker, and I think honorable gentlemen will admit that I have conclusively proved, that the educational clauses of the original Act of the Union were not placed there as a concession to the Catholics. Did the parallel clauses in the Manitoba Act involve such a concession? I am free to say that the Roman Catholic members of Parliament demanded their insertion in the Manitoba Act. But were they after all an improper concession? It was but the extension to Manitoba of a part of the essential basis of Union, of provisions that, as expressed in the Act of Union, were not limited to any part of the Dominion. If there was no impropriety in incorporating such provisions in the B. N. A. Act there could scarcely have been any serious impropriety in putting the like provisions in the Manitoba Act.

In the case of Manitoba, however, there were special reasons why that concession was made to the minority, and I wish to refer to some of them for a moment. It will be remembered by honorable gentlemen that at that time there was a rebellion in this province, the settlers rising in arms because they were not satisfied with having this union imposed upon them; and it became a matter of deepest solicitude and anxiety to the Dominion, as well as to the Imperial authorities, to put down that rebellion and satisfy the people. The Governor-General of Canada requested Archbishop Tache to come all the way from Rome to assist in putting down the troubles, and he wrote a letter of instructions to the Bishop, dated 16th February, 1870 in which he says "The people may rely that respect and attention will be extended to the different religious persuasions, * * and that all the franchises which have subsisted, * * shall be duly continued and liberally conferred. In declaring the desire and determination of Her Majesty's Cabinet, you may safely use the terms of the ancient formula; 'right shall be done in all cases'."

I am not going to assert that there is any promise there as to schools, but I simply point out the spirit of the promises that were made to the old French Half-breed settlers, through their archbishop, by the Queen's representative, that their religious persuasions would be respected, and that the franchises which subsisted would be continued to them. Then there was a Royal proclamation issued by the Governor-General in which he said: "By Her Majesty's authority I do therefore assure you that on the union with Canada, all your civil and religious rights and privileges will be respected, your property assured to you, and that your country will be governed, as in the past, under British laws, and in the spirit of British justice."

A delegation was properly appointed as representing the people of this Province, through the intervention of Sir Donald Smith, who came here as the envoy of the Government, in order that such delegation might proceed to Ottawa to settle terms of union. That delegation went to Ottawa; they were officially received as such, and negotiations were carried on and completed with them as such delegates on the part of the people here, by the Federal Government, and the result was the Manitoba Act. I am not going to say anything with regard to the Bill of Rights, said to have been presented by the delegates, demanding the maintenance of Seperate Schools, except that I think Archbishop Tache has failed to establish his contention with regard to that. I say, however, that the delegation went to Ottawa duly accredited as representing the settlers: they there discussed the whole matter, and they arrived at a conclusion which was embodied in the Act, As it did not give them any greater rights than the Catholic minority of Ontario had, there was nothing unreasonable in it. I say that upon the faith of the statements made and of the legislation itself the settlers had a perfect right to expect that their institution were guaranteed to them.

I now desire to draw attention to the fact, that all this difficulty which threatens us, because of the duty cast upon the Fed-

ral Powers to interfere with provincial legislation respecting education, was clearly foreseen and foreshadowed. There was at the time of the Confederation debates, in the old Canadian Parliament, a very prominent man, a Roman Catholic of Ontario, who was opposed to Confederation, and who clearly pointed out the troubles that would arise on a contest between the two governments on that question. Indeed he protested most earnestly against any provision which would withdraw the subject of education from the control of the provincial majority, and with the clearest foresight, he predicted the very circumstances that have arisen in Manitoba to-day. I refer to the late John Sandfield Macdonald, for some years premier of Canada, and afterwards premier of Ontario. In a speech in that debate he said:—"I wish hon. members to bear in mind that the experience that we have had in this country proves, that a denial of the right of the majority to legislate on any given matter has always led to grave consequences. * * By making a constitutional restriction in respect to the schools of the minority, we are sowing the seeds from which will in the end arise a serious conflict, unless the Constitution be amended. The minority will be quite safe on a question relating to their faith and their education in a colony under the sway of the British Crown, but if you expressly withdraw that question from the control of the majority, the rights of the minority will not be safe in either section of the province, if you distrust the action of the majority. It is our duty, Sir, to see that a question that affects us so dearly as the education of our children, * * * shall not be withdrawn from the management of the Local Legislature. We ought not to deprive them of a power which they will want to exercise, just because they are deprived of it, and provoke a desire on their part to alter the system. * * The minority is safe against undue encroachment on its rights, and I am willing to trust to the sense of justice of the majority in Upper Canada to preserve the religious and educational liberties of the Roman Catholics of Upper Canada." Mr. Macdonald proceeded to place his views formally on record by moving, by way of amendment, when the House was going into Committees on the Confederation resolutions, "that it be an instruction to the said Committee to consider whether any constitutional restriction which shall exclude from the Local Legislature of Upper Canada the entire control and direction of education subject only to the approval or disapproval of the General Parliament is not calculated to create wide-spread dissatisfaction and tend to foster and create jealousy and strife between the various religious bodies in that section of the province." And he closed in these words: "I desire to have the expression of the opinion of the members of this House whether it is not better to let the Catholics of Upper Canada and the Protestants of Lower Canada protect themselves, or rather, trust for protection to the sense of justice of their fellow subjects."

Thus did Sandfield Macdonald want to entrust the rights and interests of his co-religionists, although in the minority, to the majority, while he clearly pointed out the danger of Federal interference. Who do you think, of all men in the House, replied to him? It was no less a man than Alexander Mackenzie, who, although he must have seen that the trouble predicted was a very possible one, yet felt that with all its disadvantages the scheme was the best that was available. In his reply Mr. Mackenzie said: "Having already voted for the whole of these resolutions, I cannot have any hesitation in voting against the amendment. I can only tell him (Mr. Sandfield Macdonald) that I, having struggled as much as any one to prevent legislation tending to break up our common school system, and having found my efforts utterly ineffectual, do not see that our position would be any worse if the resolutions are carried into law. I formerly stated that I thought the separate school system would not prove very disastrous if it went no further. I do not now think they will do much harm if they remain in the same position as at present, and therefore, though I am against the separate school system, I am willing to accept this Confederation, even though it perpetuates a small number of separate schools."

Mr. Mackenzie went on to point out that the abolition of separate schools had been found impossible, and that, with all his objection to them, he preferred to put up with the system, especially after some years' experience had proved they were less injurious than he had anticipated. And he preferred to risk the consequences so strikingly pourtrayed by Sandfield Macdonald rather than have the old question re-opened. The words of Sandfield Macdonald are pregnant with meaning to us here to-day, and so are those of Mac-

kenzie, especially in the light of his action in the New Brunswick case. The lesson is, one of toleration on the part of the majority for the prejudices of the minority, and the avoidance in that way of any justification for an appeal to the Federal power with its unfortunate consequences, by the exercise of that toleration in the Local Legislature, as was so earnestly urged in the case of New Brunswick.

I now desire to speak of a delicate matter, which may be somewhat distasteful to some who hear me, but I am bound to tell the truth, even if it may offend some. I make the grave charge that this school legislation was put upon the statute book of this province in defiance of the most solemn pledges of the Liberal party. In January of 1888, an event occurred which brought the Liberals into power in this province. My hon. friends had for years been engaged in an effort to defeat the Norquay Government, in which I helped them all in my power, because we felt that it would be to the advantage of the province to have a change. The crisis came when the St. Francois Xavier election took place at the time I have mentioned. Dr. Harrison was at that time premier of the province, and he chose as his provincial secretary Mr. Joseph Burke, who, though he bears an Irish name, is really a French Canadian. He was living among his own people in the district of St. Francois Xavier, and had been elected as a member of this House in 1886 by acclamation. On accepting office he went back for re-election. It was proposed that we should oppose him, though for myself I thought it was useless. Mr. F. H. Francis, an English speaking Presbyterian, and a son-in-law of the late Rev. Dr. Black, the great pioneer Presbyterian missionary of this country, was asked to take the field against Mr. Burke in this French constituency. He could not possibly be elected, unless he got a large proportion of the votes of the French population. Without this, I say, his election was an absolute impossibility. Now I state on information and belief, that Mr. Francis, when consulted by leading members of the Liberal party, and asked to accept the nomination, said he would not accept unless empowered to give the electors a pledge that if the Liberals got into office they would not interfere with the institutions of the French, their language or their school laws. I am informed that he was authorised to make that promise, that he went to the electors and gave them the pledge. I did not know that of my own knowledge, but I knew from the newspaper reports, and from information brought to the Winnipeg Liberals, that strong speeches were being made by Mr. Burke and his friends in the Riding, calling upon half-breeds and French Canadians to vote against the Liberal candidate, on the ground that Liberals would likely pass laws interfering with their institutions. It was said, "are you going to put into power people, who, when they get into office, will legislate away your schools and your language," and the electors were appealed to to oppose Mr. Francis for that reason. This became practically the leading question of that campaign, and the contest was a crucial one. Should the Liberals win, it was plain, in view of the losses sustained by the Government, that they must resign. So that the success of the Liberal candidate meant that the party would at once attain power, while the election of Mr. Burke would almost certainly have ensured the continuance of the Liberals in opposition till this day. It became necessary for the party leaders, therefore, to meet this appeal to the religious and race feelings of the French and half-breed voters, the pledge given by Mr. Francis appearing to be insufficient to satisfy them. Now the Liberals had a defined platform, and their views were well understood. Personally I knew well what our policy was. Perhaps no one, apart from Mr. Greenway and Mr. Martin, was in a better position to know fully our attitude on these questions. There was no doubt about that attitude. There is no doubt we were denouncing the abuses of the Norquay Government with regard to the French printing, the large amount of money expended, and Liberals were determined, if the party came into power, that they would do away with those abuses, but the idea of interfering with rights guaranteed, or supposed to have been guaranteed, by the Constitution, had never been suggested. On the contrary, it had frequently been pointed out on the public platform by Liberal leaders that these institutions were protected, and that our remedy was in correcting abuses and not in abolishing the institutions. It was promised that the expenses arising from the use of the French language would be cut down and the grant to education increased. No one had ever asked or suggested that we should go a step further. When the question about the Liberal policy became so prominent and urgent in St. Francois Xavier, I was consulted with

others about it, and Mr. Martin was asked to go out and assist the candidate. I was told that he went out and attended a meeting, and I was told of promises he had publicly made, which were, to my knowledge, in accord with what was intended he should make. I went with him myself to a second meeting. It was a large gathering, mainly composed of French and half-breed Catholics. The same charges were made by Burke as to what the Liberals would do if in office. The same appeals were made to his countrymen and co-religionists to defeat Mr. Francis for that reason. Mr. Martin, in a powerful speech, denounced the statements of Burke and his friends as false. He told the meeting that it had never been the policy of Liberals to interfere with the language or institutions of the French Catholic population, and he appealed to them to trust the Liberals, and to support their candidate. At that time I was President of the Provincial Association of Liberals, and Mr. Martin referred to my presence at the meeting, and said I could put him right if he was wrong. He went further, and not only said Liberals had no idea of interfering with these institutions, but he gave a positive pledge, in the name of the Liberal party, that they would not do so. I have always thought that the movement to establish the present school law, abolishing all Catholic schools, against the strong protest of the minority was, under the circumstances, and in the face of that promise, a gross wrong. Personally I made no promise, but I felt as much bound by the pledge given as if I had given it myself.

Now I wish to say this of Mr. Joseph Martin, that I have understood it is claimed that he had forgotten that promise of his in 1888 when he decided and promised in 1889 to introduce the new School law. I wish to say also that personally I quite believe that he did actually forget the promise. He is possessed of too true and generous a nature to make such a promise, and afterwards deliberately to go back on it, unless his having promised had escaped his memory. Those who know him best know that he is a most impulsive man—and impetuous—and that he often acts hastily on impulse and not of deliberation; and I can imagine him, forgetful of the deliberate promise at St. Francis Xavier, making the promise for the abolition of Separate Schools under such an impulse. I can the more readily understand that Mr. Martin had quite forgotten his pledge, because the circumstances had in fact, so far as I can now recall, gone out of my own memory for the time, and until I saw or heard it mentioned afterwards, when the circumstances came clearly back to my mind. Now I know that Mr. Greenway, the Premier, was a party to the giving of that promise, and I am sorry he is not in his place so that I might say so in his presence, because he is the man that I hold responsible for the whole trouble. As far as I was concerned, when it was proposed to introduce the present law, had I been of the opinion that we ought, notwithstanding that promise, to pass the legislation of 1890, sooner than be personally a party to it I would rather have quit this House forever. It so happened, however, that without even remembering for the time the circumstance of the promise, and altogether irrespective of it, the moment the announcement was made in August 1889 about the proposed enactment, I formed the most decided opinion, an opinion which I then communicated to many of my friends, that we were about to make a great mistake. This was the opinion I formed on the question on its own merits, having regard to the history of the question in the east, with which I was somewhat familiar. It was my judgment, even then, that we ought not to enact the proposed law even on its merits and apart from any pledges, and it was my opinion, and I so expressed myself most openly, that we ought to adopt a system consistent with the spirit of the settlement of 1865 at confederation, a system such as they have in Ontario, where it has given so much satisfaction.

I wish here to refer to a statement made by my honorable friend the Attorney-General, during the debate of 1890, to the effect that even if the pledge was given by Mr. Martin for the party, it did not bind the party, and that we were free to disregard it. First of all, I say that I cannot subscribe to that proposition. I say that the pledge was given in the name of the liberal party, for a party purpose, and that it did bind them under the circumstances in which it was made. Without that promise the party could not have carried that election, and by that election alone they attained to power. That power was obtained on the faith of that solemn pledge, and it was the Liberal party, as a party, that benefitted thereby, and that accepted power and took advan-

tage, for that purpose, of the votes given on the faith thereof. In the second place even if it were felt that the promise did not bind Liberals to support separate schools at all times, I say that they were bound at all events, before making the change, to put the minority, whose support was so obtained, back into the position where they were when we took advantage of their support. The Liberal party should have resigned office and restored the minority to the vantage ground they held at the time the pledges were given. I think we made a mistake and that we ought to retrace our steps and do what is right in this matter.

I think, Sir, that we can do this without going back to the old laws. I think that all we have to do, in order to secure a fair school system for our province, is to adopt that which has been in operation in the good old Province of Ontario for the past 30 years. Do we want a better system of education than that they have in that province to-day? They have a public school system there, and it is a public system all through. Every school in the land is under government control and inspection. Where there is a settlement of Catholics large enough to have a school of their own they are allowed to have their own religious exercises in it, but that school is practically as much under the control of the Government, in so far as secular education is concerned, as the public school. And if in some respects the system there falls short we might improve on it here. There is no such a thing as Catholic schools in Ontario, in the sense that Catholic school existed in this province under the old system. The Catholic schools that existed here then, and that exist here now, so far as they exist against the law, are Catholic schools pure and simple—church schools. But in Ontario, where Roman Catholic have a settlement sufficiently large to have a school, they are allowed to have one, but only on coming within the law and under the law, like the public schools, so as to be under state control. Every Catholic in the Province, not in a separate district, and not joining the separate school, pays his taxes to the public school, and only the Catholic who joins that separate school pays his rates to it, and need not pay taxes to the public schools. And what is the result in Ontario? There are 700 municipalities in the Province with more or less of a mixed population, I fancy, in them all, and yet over 500 of them, (as told have not a separate school. There are over 80,000 Catholic children in that province and the immense majority of them, over 50,000 are going to the public schools, while it is only the minority of the Catholic children that go to the separate schools. And why? The only reason is that they are not being deprived of them by the majority. There is something of a contest I believe going on between the Catholic laity and the Catholic priesthood with regard to this school question, the laity in some measure preferring the public schools and the priesthood insisting on the use of the separate schools. In Ontario Protestants and Catholics are living in harmony. There is no ill-feeling between them, and there is no attempt made by the majority to deprive the minority of what the latter deem their rights. Catholic parents, seeing that no attempt is made to deprive them of their rights, are not called upon to be constantly asserting these rights and struggling to maintain them. You can imagine yourself, Mr. Speaker, claiming to have a right to the enjoyment of some privilege, which perhaps you are not availing yourself of. As long as no one denies your right you would, perhaps, not go as far as the door of this chamber to use it, but let any person try to take it away from you or to deny your right to it, and you will fight for it like a bulldog. This is human nature, Mr. Speaker, and it is an element that we have to recognize in these questions. Let Sir Oliver Mowat show himself so weak, or so wicked, as to start an agitation to deprive the Roman Catholic minority in Ontario of what they deem their rights, even though they do not largely use them, and what will be the result? Why in less than six months many of the Catholic parents who are now sending their children to the public schools will be sending them to the separate schools. Look at New Brunswick. Will any one say that the Government there have been able, even with their strict law, to abolish separate schools? On the contrary, in St. John, Fredericton and other places in that province, you will find Catholic teachers, in their garb, teaching the tenets of their church in schools that are called public schools, and that receive public aid just like the public schools. David Mills, too, as the result of long observation, says the public school system of Ontario is the best he has ever known for a mixed community. He was for

many years a school teacher, and for many years afterwards an inspector, and after all that experience he practically says that he would not seek a better system than the one now in vogue in Ontario.

Some of the newspapers sound the praises of the school system of the United States. I have a great admiration for it. There are no separate schools established by law there and yet what is the result? Although the Catholic parents in all cases pay their taxes to the public schools, the majority of them in many of the States send their children to their own parish schools and pay for these besides. And what is the practical result on the education of the Catholic children? In the first place the majority of them are not getting the advantage of a secular primary education under the control of the government at all. In Ontario on the other hand all the catholic children, even the minority attending the Separate Schools, receive an education directly under State control and management. There is scarcely a leading public man or educationist in Ontario to-day, after a thirty years experience of it, who does not admit that the system there is fairly satisfactory. Even the Equal Rights Association gave it a general approval. All they demanded was a slight amendment of the law which turned out to be provided for already. I think we might well be pleased if we had such a system here. And I earnestly ask this House to consider whether we should not now accept it, and thus put an end, as I believe we would, to all this charge of injustice and this feeling of discontent. And we would avoid the very serious, perhaps most dangerous, agitation and disquietude that may arise should the Federal powers attempt, even if justly, to impose remedial legislation upon us. It is with a most sincere hope that such a result may be obtained that I have brought the question up.

The honorable member for St. Boniface (Mr. Prendergast) is going to second my resolution just to enable me to bring it before the House. I do not understand that he assents to its terms, nor would I expect him to do so, at all events unless the Government offered terms such as I propose as a measure of settlement. It seems to me that my resolution suggests a scheme in which the minority can see a solution to the whole difficulty. If the Government will meet the Roman Catholics on that line I would sincerely hope that the Catholics would be willing to meet them on that line. If the Government refuse, of course it cannot be expected that the minority will make an advance. I say to my honorable friends in the Government that in all earnestness and sincerity I appeal to them to accept this proposition. I have no quarrel with my honorable friends. I certainly think we have acted badly to the minority and dont think any gentleman will say I have not from the beginning been sincerely and honestly of that opinion. I say to my honorable friends that if they will attempt to settle this matter in some such way as I suggest, and if they will make one or two other changes of policy so as to come back to true Liberal lines—if they will take away from the liberals of this province the stigma of having done such a wrong to the minority and of having departed in these other questions from true Liberal views—I will be content to say "good bye" to my honorable friends on the Opposition side, amongst whom I have sat, and I will cross to the government side and give to my honorable friends there a generous support. Or I will be ready if it should better suit my honorable friends, to resign my seat in the House, content to have had a hand in bringing about a settlement of this most delicate question, and in aiding to promote liberal views generally. Let me warn the honorable Minister of Public Works that the day is surely coming, and perhaps it is not so far distant, when his leader and mine, the Hon. Wilfrid Laurier, may be called on to lead the Government of the Dominion. I warn him that, in such an event, Mr. Laurier will meet this same question as a stumbling block in his way, as it is a serious one in the way of the present Minister. Were Sir John Thompson to be defeated, as indeed he may be, on this question I do not believe for a moment that Mr. Laurier would accept office with the responsibility of that weight upon him under such circumstances.

Once more I appeal to the House and to the Government, and ask them to consider this question seriously and solemnly. If they have an earnest desire to have this question settled now, and once for all, I ask them not at once to decide against my resolution, but that they should at least hold their judgment and defer the discussion to enable them to give the question further careful and dispassionate consideration. I urge this course for the one reason that I see in the adoption of the resolution, a possible way of satisfactorily settling the whole question forever. With that view Mr. Speaker I beg to move the adoption of the resolution.